

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
LACY MILLER : DETERMINATION
DTA NO. 830872
for Redetermination of a Deficiency or for Refund of New :
York State Personal Income Tax under Article 22 of Tax :
Law for the Year 2020. :

Petitioner, Lacy Miller, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2020.

On January 27, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Peter Ostwald, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by February 27, 2023, which date began the 90-day period for issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Acting Supervising Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals lacks jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioner, Lacy Miller, filed a petition with the Division of Tax Appeals on March 9, 2022.
2. Attached to the petition was a statement of proposed audit changes, dated December 23, 2021. Petitioner failed to attach a statutory notice or conciliation order.

3. On March 25, 2022, a written request was made by the Division of Tax Appeals to petitioner requesting that she provide a copy of the statutory notice being protested.

4. Petitioner did not provide any statutory notice.

5. On January 27, 2023, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioner. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was in improper form.

6. On February 14, 2023, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice issued to petitioner the Division is in agreement with the proposed dismissal.”

7. Petitioner did not submit a response to the notice of intent to dismiss petition.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation and Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of a petition . . . protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit

application . . . or any other notice which gives a person a right to a hearing” (Tax Law § 2008 [1]).

B. Pursuant to 20 NYCRR 3003.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.” In this case, no statutory notice was attached.

C. On March 25, 2022, the Division of Tax Appeals made a written request asking petitioner to supply a statutory notice. She failed to do so. Where petitioner fails to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d]). Such notice of intent was issued on January 27, 2023. Petitioner failed to respond to the notice of intent.

As petitioner failed to attach a notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]; *see Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

D. While the petition included a statement of proposed audit changes, such document does not give rise to hearing rights at the Division of Tax Appeals (*see Matter of Etienne*, Tax Appeals Tribunal, July 7, 2022).

E. It is ORDERED, on the motion of the acting supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York
May 25, 2023

/s/ Donna M. Gardiner
ACTING SUPERVISING ADMINISTRATIVE LAW JUDGE